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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKIHIKO FUJII, ATSUSHI SUZUKI, HIDEO
OOMINAMI, RYUJI OCHIAI, and YUSUKE SHIBUYA

Appeal 2011-001377
Application 10/586,609
Technology Center 1700

Before BRADLEY R. GARRIS, TERRY J. OWENS, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-17, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a coffee composition, a process for preparing the coffee composition, and a packaged beverage filled with the coffee composition. Claim 1, which claims the coffee composition, is illustrative:

1. A coffee composition comprising the following components (A) and (B):
- from 0.01 to 1 wt.% of (A) chlorogenic acids,
- less than 0.1 wt.%, based on the amount of the chlorogenic acids, of (B) hydroxyhydroquinone.

The References

Behrman	2,430,663	Nov. 11, 1947
Schlichter	3,615,666	Oct. 26, 1971
Kiefer	5,558,742	Sep. 24, 1996
Slaga	2004/0005398 A1	Jan. 8, 2004
Stelkens	GB 354,942	Aug. 20, 1931
Sosuke ¹ (as translated)	JP 06-315434	Nov. 15, 1994
Suzuki	EP 1 186 294 A2	Mar. 13, 2002

The Rejections

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1, 2 and 16 over Slaga in view of Stelkens and Sosuke,² claim 3 over Slaga in view of Stelkens, Sosuke and Suzuki, claims 4 and 5 over Slaga in view of Stelkens, Sosuke, Kiefer and Suzuki, claims 6, 7 and 17 over Slaga in view of Stelkens, Sosuke and Schlichter, claim 8 over Slaga in view of Stelkens, Sosuke, Schlichter and Suzuki, claims 9 and 10 over Slaga in view of Stelkens, Sosuke, Schlichter, Kiefer and Suzuki, claims 11 and 15 over Slaga in view of Stelkens, Sosuke and Behrman, claim 12 over Slaga in view

¹ The Examiner (Ans. 3) and the Appellants (Br. 4) refer to JP 06-315434 to Naruo Noboru and Oyabu Hajime as “Sosuke”. For consistency, we likewise do so.

² The Examiner’s inclusion of claim 16 in the explanation of the rejection over Slaga in view of Stelkens and Sosuke (Ans. 3) indicates that the omission of claim 16 from the statement of that rejection was inadvertent.

of Stelkens, Sosuke, Behrman and Suzuki, and claims 13 and 14 over Slaga in view of Stelkens, Sosuke, Behrman, Kiefer and Suzuki.³

OPINION

We reverse the rejections. We need to address only the independent claims (1, 2, 6, 7 and 11). Claims 1 and 11 require less than 0.1 wt%, based on the 0.01-1 wt% amount of chlorogenic acids, of hydroxyhydroquinone (HHQ), claim 6 requires less than 0.1 wt%, based on the 0.01-10 wt% amount of chlorogenic acids, of HHQ, and claims 2 and 7 require no substantial high performance liquid chromatography peak within a range of a relative retention time of from 0.54 to 0.61 with respect to gallic acid used as a reference substance.^{4,5}

For a suggestion of a coffee composition containing the Appellants' required low amount of HHQ the Examiner relies upon Stelkens and Sosuke (Ans. 3-5).

Stelkens removes poisonous and distasteful components from coffee by adsorbing them on an adsorbing agent such as activated carbon (p. 1, ll. 27-51).

Sosuke suppresses the astringent taste in coffee by adsorbing from it a polymeric brown-black ingredient onto activated carbon having a 30-100 Å average pore radius (¶¶ 0006-7). "[T]he polymeric brown-black ingredient is expected to be a complex reactant of saccharides, various organic acids,

³ The Examiner's mention of Sosuke in the explanation of the rejection of claims 13 and 14 indicates that the omission of Sosuke from the statement of that rejection was inadvertent (Ans. 9).

⁴ That peak indicates the presence of HHQ (Spec. ¶ 0023).

⁵ The Examiner does not rely upon Suzuki or Kiefer for any disclosure that remedies the deficiency in the references applied to the independent claims (Ans. 5-9).

proteins and the like, and examples may include a dimer, a trimer and the like of chlorogenic acid that exists in a large amount” (§ 0018).

Neither Stelkens nor Sosuke mentions HHQ.

The Examiner finds that HHQ is “a poisonous substance in that it has toxic effects on the body such as the cleavage of DNA strands” (Ans. 11). Because the Appellants have not challenged that finding, we accept it as fact. *See In re Kunzmann*, 326 F.2d 424, 425 n.3 (CCPA 1964).

The Examiner argues that one of ordinary skill in the art would treat coffee with activated carbon “until a desired amount of poisonous substances are removed” (Ans. 11). The Examiner, however, has not established that the desired amount of HHQ for preventing cleavage of DNA strands would reduce the HHQ to the levels required by the Appellants’ claims. The Appellants reduce the HHQ to the levels required by their claims for a different purpose, i.e., to avoid disturbing the hypotensive effect of chlorogenic acids (Spec. ¶ 0010).

The Examiner argues that in the Declaration under 37 C.F.R. § .132 by Hideo Ohminami filed April 24, 2009, the HHQ/chlorogenic acid ratio of 0.0024 to which the HHQ level was reduced by Stelkens’ method is within the Appellants’ claim 1 (Ans. 10).

The HHQ/chlorogenic acid ratio required by the Appellants’ claim 1 is less than 0.001. The HHQ level of less than 0.1 wt% required by that claim is based upon the amount of chlorogenic acids which is 0.01 to 1 wt%.

Accordingly, we do not sustain the Examiner’s rejections.

DECISION/ORDER

The rejections under 35 U.S.C. § 103 of claims 1, 2 and 16 over Slaga in view of Stelkens and Sosuke, claim 3 over Slaga in view of Stelkens,

Sosuke and Suzuki, claims 4 and 5 over Slaga in view of Stelkens, Sosuke, Kiefer and Suzuki, claims 6, 7 and 17 over Slaga in view of Stelkens, Sosuke and Schlichter, claim 8 over Slaga in view of Stelkens, Sosuke, Schlichter and Suzuki, claims 9 and 10 over Slaga in view of Stelkens, Sosuke, Schlichter, Kiefer and Suzuki, claims 11 and 15 over Slaga in view of Stelkens, Sosuke and Behrman, claim 12 over Slaga in view of Stelkens, Sosuke, Behrman and Suzuki, and claims 13 and 14 over Slaga in view of Stelkens, Sosuke, Behrman, Kiefer and Suzuki are reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED